

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DAVID SCOTT HARRISON,
CDCR #T-53894,

Plaintiff,

vs.

EXECUTIVE OFFICE FOR UNITED
STATES ATTORNEYS;

Defendants.

Case No.: 16-CV-1310 JLS (BGS)

**ORDER: (1) GRANTING MOTION
TO PROCEED *IN FORMA*
PAUPERIS, AND
(2) DIRECTING U.S. MARSHAL TO
EFFECT SERVICE OF SUMMONS
AND COMPLAINT PURSUANT TO
28 U.S.C. § 1915(d) AND FED. R. CIV.
P. 4(c)(3)**

(ECF Nos. 1, 2)

Plaintiff David Scott Harrison is proceeding pro se and is currently incarcerated at San Quentin State Prison. He has filed an action pursuant to the Freedom of Information Act (Compl., ECF No. 1), and a Motion to Proceed *In Forma Pauperis* (IFP) pursuant to 28 U.S.C. § 1915(a) (IFP Mot., ECF No. 2).

IFP MOTION

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of

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1 \$400.¹ *See* 28 U.S.C. § 1914(a). An action may proceed despite the plaintiff's failure to
 2 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.
 3 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*
 4 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the plaintiff is a prisoner and he
 5 is granted leave to proceed IFP, he nevertheless remains obligated to pay the entire fee in
 6 "increments," *Bruce v. Samuels*, 136 S. Ct. 627, 629 (2016); *Williams v. Paramo*, 775 F.3d
 7 1182, 1185 (9th Cir. 2015), regardless of whether his action is ultimately dismissed, *see* 28
 8 U.S.C. § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

9 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act (PLRA),
 10 a prisoner seeking leave to proceed IFP must also submit a "certified copy of the trust fund
 11 account statement (or institutional equivalent) for . . . the six-month period immediately
 12 preceding the filing of the complaint." 28 U.S.C. § 1915(a)(2); *Andrews v. King*, 398 F.3d
 13 1113, 1119 (9th Cir. 2005). From the certified trust account statement, the Court assesses
 14 an initial payment of 20% of (a) the average monthly deposits in the account for the past
 15 six months, or (b) the average monthly balance in the account for the past six months,
 16 whichever is greater, unless the prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1); *Taylor*,
 17 281 F.3d at 850. The institution having custody of the prisoner then collects subsequent
 18 payments, assessed at 20% of the preceding month's income, in any month in which the
 19 prisoner's account exceeds \$10, and forwards them to the Court until the entire filing fee
 20 is paid. *See* 28 U.S.C. § 1915(b)(2); *Bruce*, 136 S. Ct. at 629.

21 In support of his IFP Motion, Plaintiff has submitted a certified copy of his trust
 22 account statement pursuant to 28 U.S.C. § 1915(a)(2) and Civil Local Rule 3.2. *Andrews*,
 23 398 F.3d at 1119. This statement shows Plaintiff has had no monthly deposits to his
 24 account, has carried no balance over the six month period preceding the filing of his
 25

26
 27 ¹ In addition to the \$350 statutory fee, all parties filing civil actions on or after May 1, 2013, must pay
 28 an additional administrative fee of \$50. *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees,
 District Court Misc. Fee Schedule) (eff. May 1, 2013). However, the additional \$50 administrative fee is
 waived if the plaintiff is granted leave to proceed IFP. *Id.*

1 Complaint, and that his current available balance is zero. (ECF No. 2 at 5; *see also* 28
 2 U.S.C. § 1915(b)(4) (“In no event shall a prisoner be prohibited from bringing a civil action
 3 or appealing a civil action or criminal judgment for the reason that the prisoner has no
 4 assets and no means by which to pay the initial partial filing fee.”); *Taylor*, 281 F.3d at 850
 5 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety-valve” preventing dismissal of a
 6 prisoner’s IFP case based solely on a “failure to pay . . . due to the lack of funds available
 7 to him when payment is ordered.”).)

8 Therefore, the Court **GRANTS** Plaintiff’s IFP Motion (ECF No. 2), declines to
 9 “exact” any initial filing fee because his trust account statement shows he “has no means
 10 to pay it,” *Bruce*, 136 S. Ct. at 629, and directs the Secretary of the California Department
 11 of Corrections and Rehabilitation (CDCR) to collect the entire \$350 balance of the filing
 12 fees required by 28 U.S.C. § 1914 and forward them to the Clerk of the Court pursuant to
 13 the installment payment provisions set forth in 28 U.S.C. § 1915(b)(1). *See id.*

14 **INITIAL SCREENING PURSUANT TO 28 U.S.C. §§ 1915(E)(2) AND 1915A**

15 Because Plaintiff is a prisoner and is proceeding IFP, his complaint requires a pre-
 16 answer screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these
 17 provisions of the PLRA, the Court must *sua sponte* dismiss complaints, or any portions
 18 thereof, which are frivolous, malicious, fail to state a claim, or which seek damages from
 19 defendants who are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b); *Rhodes v.*
 20 *Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)); *Lopez*
 21 *v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (discussing § 1915(e)(2)) (en banc). “The
 22 purpose of [screening] is ‘to ensure that the targets of frivolous or malicious suits need not
 23 bear the expense of responding.’” *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014)
 24 (quoting *Wheeler v. Wexford Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)).

25 “The standard for determining whether a plaintiff has failed to state a claim upon
 26 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
 27 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d
 28 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir.

2012) (noting that screening pursuant to § 1915A “incorporates the familiar standard applied in the context of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6)”). Rule 12(b)(6) requires a complaint “contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted); *Wilhelm*, 680 F.3d at 1121.

Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* The “mere possibility of misconduct” falls short of meeting this plausibility standard. *Id.*; see also *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009).

The Court finds Plaintiff’s complaint sufficient to survive the “low threshold” for proceeding past the sua sponte screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b). See *Wilhelm*, 680 F.3d at 1123; *Iqbal*, 556 U.S. at 678.

CONCLUSION

Good cause appearing, the Court:

1. **GRANTS** Plaintiff’s IFP Motion (ECF No. 2);
2. **DIRECTS** the Secretary of the CDCR, or his designee, to collect from Plaintiff’s prison trust account the \$350 filing fee owed in this case by garnishing monthly payments from his account in an amount equal to twenty percent (20%) of the preceding month’s income and forwarding those payments to the Clerk of the Court each time the amount in the account exceeds \$10 pursuant to 28 U.S.C. § 1915(b)(2). ALL PAYMENTS SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS ACTION;
3. **DIRECTS** the Clerk of the Court to serve a copy of this Order on Scott Kernan, Secretary, CDCR, P.O. Box 942883, Sacramento, California, 94283-0001;

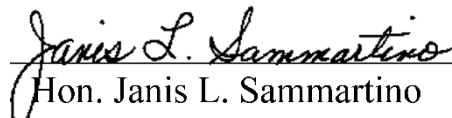
1 4. **DIRECTS** the Clerk to issue a summons as to Plaintiff's Complaint (ECF No.
 2 1) and forward it to Plaintiff along with a blank U.S. Marshal Form 285 for each Defendant.
 3 In addition, the Clerk will provide Plaintiff with a certified copy of this Order, a certified
 4 copy of his Complaint, and the summons so that he may serve the Defendants. Upon
 5 receipt of this "IFP Package," Plaintiff must complete the Form 285s as completely and
 6 accurately as possible, and return them to the United States Marshal according to the
 7 instructions the Clerk provides in the letter accompanying his IFP package;

8 5. **ORDERS** the U.S. Marshal to serve a copy of the Complaint and summons
 9 upon the Defendants as directed by Plaintiff on the USM Form 285s provided to him. All
 10 costs of that service will be advanced by the United States. *See* 28 U.S.C. § 1915(d); Fed.
 11 R. Civ. P. 4(c)(3);

12 6. **ORDERS** Plaintiff, after service has been effected by the U.S. Marshal, to
 13 serve upon the named Defendants or, if appearance has been entered by counsel, upon
 14 Defendants' counsel, a copy of every further pleading, motion, or other document
 15 submitted for the Court's consideration pursuant to Fed. R. Civ. P. 5(b). Plaintiff must
 16 include with every original document he seeks to file with the Clerk of the Court, a
 17 certificate stating the manner in which a true and correct copy of that document has been
 18 was served on Defendants or their counsel, and the date of that service. *See* Civ. L.R. 5.2.
 19 Any document received by the Court which has not been properly filed with the Clerk or
 20 which fails to include a Certificate of Service upon Defendants may be disregarded.

21 **IT IS SO ORDERED.**

22
 23 Dated: July 21, 2016


 Hon. Janis L. Sammartino
 United States District Judge